

**STATE OF INDIANA
Board of Tax Review**

CHRISTOPHER JONES,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 49-600-01-1-5-00019
MARION COUNTY PROPERTY TAX)	Parcel No. 6018540
ASSESSMENT BOARD OF APPEALS)	
And PIKE TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the grade of the dwelling is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, John Johantges with Property Group I, on behalf of Christopher Jones (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 petition was filed on May 25, 2001. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated April 27, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 8, 2001, before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Johantges represented the Petitioner. Mr. Clifford Hardy represented the Washington Township Assessor's Office. No one appeared to represent Marion County or the PTABOA.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board's Exhibit A. Notice of Hearing on Petition was labeled Board's Exhibit B. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – Copy of the Indiana Tax Court case *Juan C. and Marcia N. Garcia v. State Board of Tax Commissioners*, 743 N.E. 2d 817 (Ind. Tax 2001)(*Garcia II*).
5. The subject property is a residence located at 7945 Mill Stream Circle, Indianapolis, Pike Township, Marion County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, the Hearing Officer requested the statement of disclosure required by 50 IAC 15-5-5. Mr. Johantges was given until August 18, 2001 to comply with this request. The request for additional evidence is labeled Board's Exhibit C. The reply from Mr. Johantges was not received until September 10, 2001. The response to the request for additional evidence is labeled Board Exhibit D.

Issue No. 1- Whether the grade of the dwelling is correct.

8. The Petitioner's position rests heavily on the Indiana Tax Court *Garcia II* decision that determined grading a home over an "A" was arbitrary and capricious. The Tax Court added the State provided no guidelines to distinguish an "A" graded home from an "A+10" graded home. *Johantges testimony* & Petitioner's Exhibit 1.
9. The Respondent opined the *Garcia II* case had been appealed to the Indiana Supreme Court by the Indiana Attorney General's Office and that the PTABOA sustained the "A + 6" grade pending a decision from the Indiana Supreme Court. *Hardy testimony*.
10. The Petitioner objected to the PTABOA's position stated above, and exclaimed that it could be years before the Indiana Supreme Court renders a decision concerning *Garcia II*. *Johantges testimony*.
11. At the hearing, the Hearing Officer requested additional evidence from Mr. Johantges. This additional evidence consisted of the Disclosure Statement. Mr. Johantges was given until August 18, 2001 to respond to this request.

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353

(Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and

equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1- Whether the grade of the dwelling is correct.

18. On February 5, 2002, the Indiana Tax Court stayed the effect of judgment in the case of *Garcia v. State Board of Tax Commissioners*, 743 N.E. 2d 817 (Ind. Tax 2001)(*Garcia II*), pending the decision of the Indiana Supreme Court (the *Garcia Stay*). Therefore, the Indiana Board of Tax Review has based this determination on the state of the law prior to the Tax Court's ruling in *Garcia II*. A copy of the *Garcia Stay* is attached hereto.
19. The home under appeal was graded "A+6" by the local officials for the assessment year March 1, 2001. The Petitioner seeks a grade reduction to a grade of "A" for the same assessment year.
20. The approach to valuing residential homes is primarily found in 50 IAC 2.2-7. The approach to valuing homes is the application of various models to represent typical types of construction. "A model is a conceptual tool used to replicate reproduction costs of given structures using typical construction materials." 50 IAC 2.2-7-6. The model assumes that there are certain elements of construction defined as specifications. These specifications create an average or "C" grade home. *Id.*
21. "Grade" is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
22. Not all residences in the State are average or "C" grade homes. Therefore, grade factors are applied to account for differences in construction specifications and quality of materials and workmanship between the models in the Regulation and the home being assessed. *Clark*, 694 N.E. 2d at 1236, n. 6. The major grade classifications are "A" through "E". 50 IAC 2.2-7-6 (d)(1). The cost schedules in the Regulation reflect the "C" grade standards of quality and design.

The following grade factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

50 IAC 2.2-7-6 (e).

23. Intermediate grade levels ranging from “A+10” through “E-1” are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-7-6 (g).
24. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected grade represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
25. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-7-6 (d)), the grade specification table (50 IAC 2.2-7-6 (b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.
26. The Tax Court declared the cost tables contained in the State’s regulation governing the 1995 general reassessment, e.g. 50 IAC 2.2-7-11, 2.2-8-7, and 2.2-9-6, unconstitutional under the Property Tax Clause. *Town of St. John III*, 690 N.E. 2d at 382.

27. The Indiana Supreme Court affirmed the Tax Court's declaration regarding the cost tables in *Town of St. John V*, 702 N.E. 2d at 1043.
28. The Tax Court also invalidated subjective elements of the regulation, e.g., neighborhood, condition, and grade, holding that the regulation did not contain ascertainable standards. *Town of St. John III*, 690 N.E. 2d at 388. This holding in *Town of St. John III* was not appealed.
29. Though the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
30. Accordingly, in property tax appeals, the Petitioner has the responsibility to provide probative and meaningful evidence to support a claim that the grade factor assigned by the local officials is incorrect. The inability to provide information identifying features and building specifications reveals that a claim for a grade change is purely speculative and is not supported by significant evidence.
31. The Petitioner's evidence and position in this appeal is based solely on the opinion presented by the Tax Court in *Garcia II* (Petitioner Exhibit 1), which stated the State does not provide any guidelines to distinguish an "A" grade home from an "A+10" grade home.
32. In response to the Tax Court's decision in *Garcia II*, the Attorney General's Office on behalf of the State filed petition for transfer to the Indiana Supreme Court. On August 13, 2001 the Indiana Supreme Court granted transfer of this case.
33. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested

property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

34. The record is devoid of any analysis by the Petitioner of similar properties. Thus the Petitioner failed to show disparate treatment of the subject property.
35. For all the reasons set forth above, the Petitioner has failed to provide probative evidence to support their claim that the Township Assessor had erred in determining the grade of the subject house. There is no change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review